



## Washington State Liquor and Cannabis Board Meeting

Wednesday, March 17, 2021, 10:00am  
This Meeting was Convened Via Conference Call

### Meeting Minutes

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#### 1. CALL TO ORDER

Chair David Postman called the regular meeting of the Washington State Liquor and Cannabis Board to order at 10:00 am on Wednesday, March 17, 2021. Member Ollie Garrett and Member Russ Hauge were also present.

#### 2. INTRODUCTION AND WELCOME OF THE NEW BOARD CHAIR – DAVID POSTMAN

Rick Garza: Good morning, Board members, staff, and everyone on the call. This is Rick Garza, Director of the Liquor and Cannabis board. It's my pleasure to introduce the LCB's new Board Chair, David Postman. David officially began his six-year term as Chair on Monday. Welcome, David.

For background and context, David most recently served as Governor Inslee's Chief of staff. He stepped away from the role in November 2020 to coincide with the conclusion of Governor Inslee's second term, a post he'd held since January of 2015. Prior to that role, David was Governor Inslee's Communications Director. David is a respected presence in state government and in regional news business. He has a 26-year career as an award winning journalist in Oregon, Alaska, and Washington, including 14 years working as a political reporter for the Seattle Times. He initially left journalism in 2008 to become the Senior Director of Communications and Media with Microsoft co-founder Paul Allen's company, Vulcan.

I can also share with you from firsthand experience that we are getting a true talent and respected professional in David. I've known him professionally for many years. As the Governor's Chief of Staff, he led the Governor's Executive Cabinet. He has been instrumental in all the difficult policy decisions the Governor has made over his first two terms. Many times, David has led conversations we had with the Governor's staff on LCB business. For instance, he was a key part of the LCB's effort to help get Washington's regulated cannabis system off the ground. He helped demonstrate to the US Department of Justice that Washington state could safely implement a safe and orderly system, ultimately resulting in the DOJ Cole Memo that was issued in August of 2013. You will find him to be bright, open minded, engaged, an intuitive thinker, and a good listener. These traits will be valuable on the Board in the agency's work ahead. So again, on behalf of the other Board Members and our staff here at LCB, welcome, David. Thank you, Russ.

Chair Postman: Thank you, Rick. I appreciate that a lot. And thanks to member Hauge for filling in as Acting Chair in the small gap we did have and also, thanks to member Garrett for her help. As I was

considering what to do here and had the chance to reach out to both Board Members a couple of weeks ago and talk to both of them and I really appreciated those conversations as well. I'm on day three of the job, so there is a steep learning curve ahead.

I just want to take one second to say how excited and really honored I am to be at the LCB. I've mentioned this to the other Board Members and to Director Garza and his staff that I had the chance to meet, is that within state government the Board and the agency is held in very high regard. The implementation of the legal cannabis market was an extraordinary effort. We did that essentially following the reinventing of the agency a decade earlier when we the voters privatized liquor sales. Those were two major reinventions of an agency and the LCB came through stronger each time. When we were dealing with the Obama Administration in 2013 on marijuana, it was not welcoming and it was not easy. The agency had to really work hard to address a long list of issues that the US Attorney General had at the time and the US Attorney in Western Washington as well and others, that made it quite clear this was not going to be an easy path. They made it hard. The LCB went above and beyond and has proven, I think, to the country that you can run a safe, professional market for legal cannabis. So, I really admire the work of the agency. And just in my short time of onboarding and being here since Monday in the official seat, there are so many great things going on. The public should know just how committed LCB staffers are to the work they do and finding new ways to do it and be innovative and open. I'll just tell you, it is a strong value of mine, openness in government. My former reporter roots still hold strong and I believe in openness in government and I think LCB has been a model for that and they will continue to be. Also, I think that the question of equity and diversity and inclusion, both within the agency and how the agency does its business and in everything we do, is the top priority. Everything touches that. We have to keep working on that and I'm confident we will.

The best thing for me coming in is that Chair Jane Rushford did such an incredible job for six years. The last thing I want to say is that I come in with amazing gratitude for the work that she did at LCB and throughout her career in state government. And I was aware of this from my perch in the governor's office watching what's happened, but it's very different once you're able to really get into the agency and talk to people and see the depth of the changes that she was able to make. We're talking about some sort of internal process things, but some of it is about caring for people and how you live that life of equity and make sure everybody has a safe workplace, to be open to critics and to be able to do that with the cool head that Chair Rushford always had. So, I know I have big shoes to fill. And I will share with you what I've shared with other groups already is when I tell people in the agency I have big shoes to fill, they say, "yes you do". So, I know that and the task is ahead.

Thank you again to Director Garza and his staff and my fellow Board Members for all the help so far. They will need to continue to educate me as we go. Thank you for that.

We're just about to move onto the agenda, so I also want to acknowledge that we're joined today by the Nooksack Tribal Vice Chair Rick George and Council Member Robert Solomon. Welcome to you both. Thank you for joining us. They will be heard from a little bit later in the agenda when we get to discussion of the Compact. We're honored to have them with us today.

### **3. APPROVAL OF MEETING MINUTES**

**MOTION:** Member Garrett moved to approve the February 17, 2021, Board meeting minutes.

**SECOND:** Member Hauge seconded.

ACTION: Chair Postman approved the motion.

Chair Postman: Approved, thank you.

Now we will move into consideration of the tribal marijuana compact with the Nooksack Indian Tribe. We will start with Chris Thompson, the agency's Director of Legislative Relations [sic](Affairs) and Tribal Liaison.

#### **4. CONSIDERATION OF TRIBAL MARIJUANA COMPACT – NOOKSACK INDIAN TRIBE**

Chris Thompson, Director of Legislative Relations, began the briefing with materials (HANDOUT 03 17 21 4)

Chris Thompson: Good morning, Mr. Chair, Board Members Hauge and Garrett, and other agency colleagues and public. My name is Chris Thompson. As the chairman said, I serve as Director of Legislative Relations but also as the Tribal Liaison since last summer. Since I provided a fairly detailed briefing yesterday I'll seek to avoid repeating that information. I just want to highlight a few high-level points for the Board as you consider the proposed Compact with the Nooksack Indian tribe.

First is that the draft Compact before you tracks very closely with the template that the agency has developed and which it regards as thoroughly vetted and pre-approved provisions. There very, very few differences with the Nooksack Indian tribe proposed Compact and that template. I gave a couple of examples yesterday where there are minor differences between the proposed Compact with a Nooksack tribe and most recently approved cannabis compact with the Chehalis Tribe late last year, completed around the Thanksgiving timeframe.

In response to Mr. Chairman, your question about the one issue that I did mention where there is a slight difference, this is in the context of a non-tribal business in the cannabis industry seeking approval from the LCB. The Nooksack Compact proposal would put the burden on the business to seek permission explicitly from the Tribe before the LCB could approve or grant permission for that non-tribal cannabis business to operate in Indian Country. Your question, Mr. Chairman, was whether or not that was a unique provision. I didn't review all the Compacts, but I looked at a good half of the previously approved Compacts and my hunch yesterday was correct. Although I'd say the large majority of previously approved Tribal Compacts line up with the way it is structured in the Nooksack proposed Compact rather than the Chehalis. The Chehalis is more the exception than the rule, although it's not the only one with a structure where the LCB would seek permission from the Tribe rather than the business. That's the answer to that question.

I would also add that through the extensive review process, which goes through not only the LCB, but the AG's office and Department of Revenue and the Governor's Office, we also review the Tribal Code. There are two areas where we have identified issues where we request that the Tribe consider revision to their Tribal Code on cannabis. These are areas that are not substantive concerns at this time. They are just perfections and corrections for the long term that we think would help the Compact withstand the test of time better in the event that there are changes, for instance, in state or local tax policy. Those are requests that we put to the Tribe and they appeared to be well received. I think that's all of the information that I need to share with you, unless there are questions.

I should say one more thing is that the proposed Compact envisions retail operations, it provides for producer and processor operations. It doesn't presently contain any provisions regarding a medical program, a testing program, or a research program, which do appear in a number of tribal compacts. So, the scope is pretty standard, it's not as expansive as some of the other compacts. And of course, if the Tribe decides in the future, they do want, for instance, a medical program, we would come back and work out those details through a Memorandum of Agreement with the Department of Health to attach to the Compact.

I'll stop there, Mr. Chairman, and if there are questions, I'd be happy to try and answer those.

Chair Postman: Thank you, Chris. And thanks for answering the question I had. I appreciate that. I'm just trying to get a picture in my head of what the universe has out there. So, thanks for that. That's my only question for now. Other questions from Board Members for Chris before we hear from the tribe?

Member Garrett: I have no questions.

Member Hauge: No questions. Thank you.

Chair Postman: Okay, great. Thank you, Chris. And I understand that the Vice Chairman is not able to attend today but Senior Tribal Attorney Charles Hurt is here on his behalf and Council Member Solomon is also here. Gentlemen, you are welcome to share your comments.

Robert Solomon: I just want to thank you for putting this on the agenda today. We are looking forward to working with the state on this. I've also worked with Mr. Garza over the years. I run all the retail operations for the Nooksack Tribe, so I have worked with the liquor Compacts and the fuel Compacts and the cigarette Compacts. I think this is a really good relationship for both sides here. I've been working on this project pretty hard, so I'm up for the challenge and looking forward to adding more revenue to our Tribal entity.

Chair Postman: Great, thank you. I'm glad to hear it was a good experience and we've heard the same from Tribal staff. I'm glad to hear that the process is working. Let me pause and see if the Board members have any questions for Mr. Solomon.

Member Garrett: No questions.

Member Hauge: No questions. Thank you.

Chair Postman: Thank you both. Anything else, Mr. Solomon?

Mr. Solomon: No, I'm good. Chuck, do you have anything?

Charles Hurt: I want to thank the Board for taking this up promptly. I did want to mention one aspect of this as Mr. Thompson mentioned, the Tribe is proposing only a small retail operation. We don't have any plans to expand beyond that at this point. We understand that we would have to come back and negotiate an amendment to the Compact if we decide to expand.

The other thing I did want to mention and I think this is just something that the Board might want to know as background. Under our Tribal Code, only the Tribe is authorized to operate a cannabis operation. No individual or private corporation may do so under Tribal law. Only operations owned and operated by the

Tribe are authorized. All of the proceeds above the standard operating expenses go to the Tribe in the form of Tribal taxes. So, all of the proceeds above operating expenses of this cannabis operation will go to support governmental program. There is no profit, if you will. It's all in the form of Tribal tax. And so at this point, the Tribe is actively expanding its programs primarily in the social services area. The proceeds from the cannabis operation will go to fund those efforts, so this is vitally important to the Tribe. And with that, I would like to thank you for hearing us today.

Chair Postman: Thank you both for attending and for your comments. At this point, I will take a motion for approval of the compact.

MOTION: Member Hauge moved to adopt the Marijuana Compact with the Nooksack Indian Tribe

SECOND: Member Garrett seconded.

ACTION: Chair Postman approved the motion.

Chair Postman: It is approved. Congratulations to the Nooksack. Best of luck to the Tribe with this endeavor. I hope it proves successful for you and allows you to increase services to your members as you said. Thank you so much for working with us on this

Mr. Solomon: Thank you.

Mr. Hurt: Thank you.

Chair Postman: We will now move to our next item which is cannabis related rulemaking timelines. We'll turn it over to Kathy Hoffman, the Policy and Rules Manager for the LCB.

#### **4. CANNABIS RELATED RULEMAKING TIMELINES**

Kathy Hoffman: Thank you Chair Postman and good morning Board Members. I have an update on our cannabis rule projects for you this morning, and it's very similar to what I shared with you yesterday, but I wanted to make sure that we provided this information to those who might be on the call today who weren't listening to caucus yesterday.

I'd like to start with the cannabis quality control rules. We've completed internal review of all comments received at the public hearing last November. There are around 120 comments and some themes are emerged as a result of that review. We've prepared a responsive document that speaks to the most common themes. For instance, there were many suggestions that require statutory changes, such as creating and developing a third party sampling program through another agency or perhaps through the LCB. This would require, of course, legislation, funding, staffing, equipment, and other things. The document also incorporates some of the content that emerged from the three deliberative dialogue sessions that we hosted in January and early February. I will be finalizing that document in the next few weeks and we'll share it once the process is complete.

The next steps for this project are to take another look at the rule draft internally and see where we can align revisions within our statutory authority and with the traceability program redesign that we discussed in caucus yesterday. We've also contacted the Governor's Office of Regulatory Innovation and Assistance

(ORIA) to begin the process of contracting with an economist to create a new “small business economic impact statement”. We are in the process of updating the timeline for these rules.

The next project concerns Tier I expansion. We're preparing to release the survey results in report form in the coming weeks. We continue internal discussions focused on developing a proposal that considers all the elements of our authorizing environment and we look forward to bringing that up to you all later this spring.

Next is the redesign of cannabis license background checks. The Board approved the CR 101 for that about a month ago. Since then, we've started the first of several internal rule drafting sessions. Following those sessions, our project team will meet again to discuss conceptual rule revisions, and schedule one, perhaps two “listen and learn” sessions. At this point, we're tentatively projecting that those will be held the weeks of April 19 and May 10. Under that tentative timeline, we'll be able to bring a proposal to you in mid to late June. That places finalization of this project in early to mid-August.

Finally, on the horizon, I'll bring a CR 101 rule inquiry to you by the end of the month that would add a permanent cross reference in our cannabis processor and retailer rules to the State Board of Health (SBOH) permanent prohibition of vitamin E acetate. Our current emergency rules allow the Board to take disciplinary action against any licensed processor or retailer who sells vapor products containing vitamin E acetate, specifically THC vapor products.

As you know, the Board approved an emergency prohibition of vitamin E acetate last May and we've extended that while the State Board of Health pursued permanent prohibition. Now that that's occurred, we can change the references in our emergency rules to a permanent prohibition of SBOH rules. This is a highly technical rule project and we don't anticipate scheduling any “listen and learn” sessions since our emergency rules have been in place continuously since May of last year.

That is my update. Are there any questions that I can answer?

Chair Postman: Thank you for the update. One question from me. You mentioned the development of a “small business economic impact statement”. For some reason I thought we had something like that in state government. If not, maybe it's in Commerce or would it have been ORIA? Maybe there's been discussion but it sounded familiar to me.

Ms. Hoffman: Yes. Any time an agency proposes a rule that may have an impact on licensees, and its primarily economic impact on licensees, we create additional provisions that will increase the cost of compliance for anyone, any license that we regulate, any entity that we regulate, are required under the Regulatory Fairness Act to complete an analysis. If that analysis reveals that there is an impact that exceeds the thresholds that are described in statute, and those are found in RCW 19.85, then we are required to complete a “small business and economic impact statement” that meets all of the elements of the statute. So, for cannabis quality control rules, we do have the opportunity now to redesign those rules, but they still will increase the costs of compliance to our licensees. And so, because LCB doesn't have a full time economist on staff, the Office of Regulatory Innovation and Assistance has a pool of economists that we can submit a statement of work to and then they can bid on that statement of work.

Chair Postman: Thank you. I appreciate that.

Ms. Hoffman: I'm happy to provide more information as you wish. Thank you.

Chair Postman: Thank you. Other questions from Member Garrett or Member Hauge.

Member Garrett: I have no questions.

Member Hauge: I have no questions. Thank you.

Chair Postman: Great. Thank you, Kathy.

We'll then move to alcohol related rulemaking and timelines and turn it over to Audrey Vasek, the Policy and Rules Coordinator.

## **5. ALCOHOL RELATED RULEMAKING AND TIMELINES**

### **TIMELINES**

Audrey Vasek: Thank you, Chair Postman and good morning Board Members Garrett and Hauge. Thanks for the opportunity to be here and provide an update on the alcohol rulemaking timelines.

I have one brief update today on the rule project related to distillery reporting payment rules. For background, the CR 101, or preproposal statement of inquiry, for this rule project was approved by the Board at the February 17 meeting and filed with the code reviser. A CR 101 considers revising the distillery reporting and payment requirements in WAC 314-28-070 through 314-28-080 and other rules if necessary, to be consistent with the Court of Appeals decision in Blue Spirits Distilling LLC versus LCB issued on December 22, 2020. After discussions with the project team, including the Licensing, Finance, and Enforcement and Education divisions, we developed a set of conceptual draft rules and shared those through GovDelivery for public feedback on March 1 with a comment period open until March 31. We've received a couple comments so far. Once the comment period ends, the project team will meet to review the feedback and develop the CR 102 rule proposal, which we tentatively hope to present to the board in April. That concludes my timeline update for this project. Are there any questions?

Member Garrett: I have no questions. Thank you.

Member Hauge: No questions, thank you.

Chair Postman: . And I have no questions either. So, now we will stay with you and move on to our two action items. The first is the Board adoption of emergency rules.

### **ACTION ITEMS (A-B)**

#### **ACTION ITEM 5A - Board Adoption of Emergency Rules Regarding WAC 314-12-250 and 275, Establishing Summary License Suspension and Stay Provisions to Enforce Governor's Proclamations**

Audrey Vasek, Policy and Rules Coordinator, began the briefing with materials (HANDOUT 5A).

Ms. Vasek: Thank you, Chair Postman. Today I'm requesting approval to file a CR 103 emergency rule package to extend the existing emergency rules establishing summary license suspension and petition for state provisions for enforcement of the Governor's Proclamations issued as a result of COVID-19.

For background, on February 29, 2020, Governor Inslee issued Proclamation 20-05 that confirmed the person to person spread of COVID-19 in Washington State and proclaimed a state of emergency for all counties throughout the state. On March 16, 2020, Governor Inslee issued proclamation 20-13, imposing statewide limits on food and beverage services in areas of congregation to limit opportunities for disease exposure and transmission in the state. On March 23, 2020, Governor Inslee issued proclamation 20-25 entitled "Stay Home, Stay Healthy", and among other things, imposed limits on conducting or participating in essential activities and employment in essential activities, temporarily prohibited certain public and private gatherings, and established a list of essential and non-essential businesses in the state. Non-essential businesses were prohibited from operation except for performing basic minimum operations. Essential businesses were encouraged to remain open and maintain operations. Establishments licensed by the Board are subject to these Governor's proclamations. Although some establishments licensed by the Board are considered essential, others are not or are subject to specific limitations.

Between March 2020 and January 2021, Governor Inslee issued a series of proclamations in response to the evolving COVID-19 situation, including Proclamations 20-25.01 through 20-25.12, amending the original Proclamations and incorporating other Proclamations including 2013. The Board has statutory authority to enforce the Proclamations and consistent with that authority, these emergency rules serve a two pronged purpose. These rules allow the Board to serve an order of summary license suspension after a preliminary staff investigation indicates that a liquor, tobacco, or vapor product licensee has violated any Governor's Proclamation issued as a result of the COVID-19 outbreak, and that immediate cessation of licensed activities are necessary for the preservation of public health and welfare. And second, provide a framework and process for an affected LCB licensee to petition the Board for a stay of summary suspension consistent with the provisions of chapter 34.05 RCW, the Administrative Procedure Act. These rules were originally adopted on April 6, 2020 and extended on July 22 and again on November 18, 2020. The current rules will expire on March 18, 2021, 120 days after filing. If the CR 103E package is approved today, I will file it with the code reviser's office and the rules will take effect immediately. This will extend the rules for another 120 days until July 15. That concludes my presentation and I'm happy to answer any questions.

Chair Postman: Great, thank you. I don't have any questions, but I do have a quick comment. I think this is important for us to do today. I hope the day comes very soon that we don't need to be worrying about this and we can get to the other side of the COVID pandemic. Things are getting better. The Governor has loosened up some restrictions recently. The vaccine is getting out. I know people are feeling like we could be close to coming out the other end, which is true. But it doesn't mean you can let up on this. Even though we've expanded occupancy requirements for restaurants and other places, we still have to have this ability to act so I'm a strong supporter of giving this approval. Board member Garrett, any comments or questions?

Member Garrett: No comments or question. Are we ready for the motion?

Chair Postman: Yes, please.

**MOTION:** Member Garrett moved to Adopt Emergency Rules Regarding WAC 314-12-250 and 275, Establishing Summary License Suspension and Stay Provisions to Enforce Governor's Proclamations.

**SECOND:** Member Hauge seconded.

**ACTION:** Chair Postman approved the motion.



Chair Postman: That is approved, thank you.

Now we will move to the second action item. Audrey.

**ACTION ITEM 5B - Board Approval of Supplemental CR 102 for 2020 Legislation Implementation - E2SSB 5549 (Distilleries)**

Audrey Vasek, Policy and Rules Coordinator, began the briefing with materials (HANDOUT 5B).

Ms. Vasek: Thank you, Chair Postman. Today I'm also requesting approval to file a supplemental CR 102 for the rule project to implement 2020 legislation: Engrossed Second Substitute Senate Bill 5549, related to distilleries.

For background, this bill modified the privileges and requirements for distillery and craft distillery licenses and established a new offsite tasting room license available to licensees beginning January 1, 2021. The CR 101 for this rule project was filed on August 5, 2020 and for stakeholder engagement, we held a virtual "listen and learn" session on November 17, 2020 to gather public feedback and suggestions for revisions.

The original CR 102 and proposed rules for this project were filed on December 23, 2020 and the proposed rules included in that CR 102 package took into consideration the feedback we received during the "listen and learn" session. After the public hearing, we decided to make substantive changes to the original rule proposal in order to incorporate feedback from the public comments, as well as make the proposed rules compatible with changes to the distillery monthly reporting and payment rules that will be necessary as a result of the Court of Appeals decision in Blue Spirits Distilling. Public hearing on the original CR 102 rule proposal was held on February 3, 2021, with one person providing oral testimony and two written comments received. A table containing these comments is included as "Attachment C" to the CR 102 memo. The substantive changes made are described in the supplemental CR 102 memo under the background section and include replacing the monthly reporting requirement on revenue tasting room sales of adulterated spirits for on premises consumption with an annual reporting requirement. This change will reduce the reporting burden on licensees. The penalty schedule is also revised accordingly, and in response to one of the public comments we've received we also clarify that the distinctive glassware markings required by statute for licensees sharing jointly operated conjoined consumption area may be either permanent or temporary.

Timeline

March 17, 2021	Board is asked to approve filing proposed rules (CR 102). CR 102 filed with the Office of the Code Reviser. LCB webpage updated and notice circulated by GovDelivery distribution list. Formal comment period begins.
April 7, 2021	Notice published in the Washington State Register.
April 28, 2021	Public hearing held and formal comment period ends.
No earlier than May 12, 2021	Board is asked to adopt rules if no substantive changes are made (CR 103).

	<p>Concise Explanatory Statement provided to individuals who offered written or oral comment at the public hearing, and during the formal comment period, consistent with RCW 34.05.325.</p> <p>CR 103 and adopted rules are filed with the Office of the Code Reviser.</p> <p>LCB webpage updated and notice circulated by GovDelivery distribution list.</p>
June 12, 2021	<p>Rules are effective 31 days after filing (unless otherwise specified), consistent with RCW 34.05.380(2).</p>

That concludes my remarks and I'm happy to answer any questions.

Chair Postman: Thank you. I don't have any questions. Is there a motion

MOTION: Member Hauge moved to approve the Supplemental CR 102 for 2020 Legislation Implementation - E2SSB 5549 (Distilleries)

SECOND: Member Garrett seconded.

ACTION: Chair Postman approved the motion.

Chair Postman: Great. Thank you. So approved. Thank you, Audrey.

## 6. GENERAL PUBLIC COMMENT

Chair Postman: Now we'll move to the general public comment to the Board. I think we only have one person signed up who was registered to speak. Please remember to state your name and your affiliation for the record. You'll have four minutes to speak and staff will give you a 30-second notice when you're getting close. Welcome, Mr. Fenton.

### Brandon Fenton – Black Diamond

Good morning. Thank you for letting me be here with my comments, although I do not believe my comments are going to be unnecessary or don't really matter. I am wanting to speak on the adoption of the emergency rules for the summary suspension of liquor licenses.

I am a liquor licensee and I do believe that the adoption of these rules is violating the state law, at least in the manner that is being done. The RCW 34.05.350 does give any agency the right to adopt emergency rules. But this statute does put conditions on it. In Section 2 it says, "An emergency rule adopted under this section takes effect upon filing with the code reviser unless a later date or specified in the order of adoption and may remain in effect for no longer than 120 days after filing. Identical or substantially similar emergency rules may not be adopted in sequence unless conditions have changed or the agency has filed notice of its intent to adopt the rule as a permanent rule".

This rule that you just voted on to adopt, the emergency rule, is a fourth identical rule in a row. The conditions have not changed. COVID is what it has been for the entire year and the threat it has been to Washingtonians is exactly the same it was a year ago. The Governor's Proclamations have been in effect for a year. The modifications that he's made on easing his restrictions do not constitute or are not substantial enough for a change in the conditions, so this Board is adopting emergency rules when they

should not. It is violating the statute. How can this Board expect licensees follow the statutes? And how can they, or you, enforce the adherence of these state laws if the Board itself is not following the laws.

Furthermore, the emergency rule is not necessary. There already exists an avenue for the state and the Governor to penalize anyone who violates the Governor's Proclamations. It falls under RCW 43.06.220 and is a gross misdemeanor. There is no reason for this Board to adopt the emergency rule over and over and over again and no reason to have it in the first place since there already exists a place for penalizing anybody that does violate the law, or the Governor's Proclamations.

I don't know whether or not you can talk about it and revote or anything like that. I think that it is ridiculous that it is continuing to go on and that these rules are being used improperly. I would hope that this Board would do the right thing and not continue to abuse their power with the emergency rulemaking process. That's all I have to say right now. Thank you.

Chair Postman: Thank you for your comments. I think Kathy Hoffman, the Policy and Rules Manager is still with us. Kathy, you could address some of what Mr. Fenton raised about the process for emergency rule adoption and such?

Ms. Hoffman: Certainly, thank you, Chair Postman and thank you, Mr. Fenton for your comments. There are circumstances when rules need to be extended, particularly in emergency rules. I think it's fair to say that the COVID-19 outbreak is one of those circumstances when this would apply.

I would take us back to vitamin E acetate ban and EVALI lung injury outbreak that happened in October of 2019, where several agencies needed to put emergency rules in place. I'm thinking primarily Department of Health, LCB and others. And, because there were extenuating circumstances, and that was actually an Executive Order, the extension of emergency rules was warranted.

Mr. Fenton, I wanted to offer to you that if you don't agree with the extension of these emergency rules, or the promulgation of these emergency rules, you do have the opportunity under RCW 34.05.350(3) - I'm assuming that you've already read that part of the Administrative Procedures Act - that you may petition the Governor's Office requesting the immediate repeal of the rule. That's an option that you have moving forward if you don't agree with these emergency rules. I hope that helps to address some of your concern and provides you an option moving forward. Thank you.

Chair Postman: Thank you for that background.

Mr. Fenton: May I respond using my remaining time?

Chair Postman: Yes, please go ahead.

Mr. Fenton: To answer that on the Section 3 of the RCW, I did file with the adoption of the third emergency rule and I petitioned the Governor's Office. What I got back from them was actually, if you look under that rule, it refers you to another RCW that lists all the agencies that the Governor can overturn those for and the LCB is not listed there. So, I was actually sent a letter from the Governor's Office saying that they do not have the authority to suspend or repeal that emergency rule.

Also, I don't know what you were necessarily saying with the acetate thing or whatever it was, but from what I gather what you were saying and listening to some of the other things is that when there is something like that that happened, I'm sure that there were emergency rules put in place until there was an adoption of a permanent rule. I'm sure that there are permanent rules that were made. And this section

for emergency rules is there so that you guys can put in in emergency rule that is needed in a short period of time to protect people and/or to give time for the proper process of adopting in a permanent rule, which takes a quite a bit of time. But there has not been anything filed that I can find in...

Dustin Dickson: Mr. Fenton, you have 30 seconds remaining.

Mr. Fenton: Okay. There's nothing that I have found in my research that says that there is, by this Board or by the LCB, an attempt to make this a permanent rule. And if it is not going to be made a permanent rule, you cannot have subsequent identical emergency rules of this nature. This Board should not do that if they expect everybody else -- you should be leading by example, and I feel that you are not at this point in this Board should reconsider adoption of that rule.

Chair Postman: Thank you for your comments. I would ask staff to look at the question of the Governor's Office response of whether or not they have that authority over the LCB. Perhaps in a future meeting we could address that.

That concludes what's on our agenda. Are there any final remarks from Member Garrett or Member Hauge?

Member Garrett: No, not at this time.

Member Hauge: No, thank you very much.

Chair Postman: Great. With that we have concluded the orders of the day. We appreciate all of your help everybody, today on staff and the Board, for getting us through this and we are now adjourned. Thank you.

## ADJOURN

Chair Postman adjourned the meeting at 10:53am.

Minutes approved this 31<sup>st</sup> day of March, 2021



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David Postman  
Board Chair



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Ollie Garrett  
Board Member



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Russ Hauge  
Board Member

Minutes prepared by: Dustin Dickson, Executive Assistant to the Board

**LCB Mission** - Promote public safety and trust through fair administration and enforcement of liquor, cannabis, tobacco, and vapor laws.

*Complete meeting packets are available online: [http://lcb.wa.gov/boardmeetings/board\\_meetings](http://lcb.wa.gov/boardmeetings/board_meetings)  
For questions about agendas or meeting materials you may email [dustin.dickson@lcb.wa.gov](mailto:dustin.dickson@lcb.wa.gov) or call 360.664.1717*